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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION

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FCC 93M-400
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In re Applications of

SCRIPPS HOWARD BROADCASTING COMPANY

For Renewal of License of Station WMAR-TV
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for a New
Television Facility on Channel 2
at Baltimore, Maryland

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File No. BRCT-910603KX

File No. BPCT-910903KE

ORDER

Issued: June 23, 1993

; Released: June 24, 1993

This is a discovery ruling on a Motion For Production of Documents By Scripps Howard Broadcasting Company that was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on June 11, 1993. An Objection was filed on June 16, 1993, by Scripps Howard Broadcasting Company ("Scripps Howard").

There must be broad compliance with relevant document requests. Parties who fail to produce requested relevant documents at discovery will be precluded from offering such documents as evidence at the hearing and adverse inferences may be drawn against the party.

Instructions and procedures for claims of privilege are contained in the Prehearing Conference Order, FCC 93M-146, released April 6, 1993, at Para. 6. Scripps Howard is required to produce only documents which relate to the business of Scripps Howard and that are in the possession or control of Scripps Howard.

Copies of documents ordered to be produced must be delivered to counsel for Four Jacks. But inspection of original documents will be at the office of counsel for Scripps Howard. The parties will pay the costs of copying their own documents unless there is an extraordinary expense (e.g. tapes).

Rulings

The rulings on the Specifications are as follows:

Specification (a). Scripps Howard must produce copies of all of its Issues/Programs Lists for the renewal period that relate to programming at WMAR-TV.¹

Specification (b). Scripps Howard must produce copies of all documents relating to the above Issues/Programs Lists.

Specification (c). Scripps Howard must produce representative documents identifying WMAR-TV's non-entertainment programming staff during the renewal period. Identification shall include name, position/job title, qualifications, duties and hours of work. Payroll records and personnel files are not required to be produced.

Specification (d). Scripps Howard must produce all WMAR-TV program logs for the renewal period. Because there is no ineptness issue there is no need to produce operational logs.

Specification (e). Scripps Howard must produce only documents that describe the news stories, PSAs and the public affairs programming that were selected, prepared and broadcast at WMAR-TV during the renewal period.

Specification (f). No objection. All documents must be produced.

Specification (g). Scripps Howard must produce all documents, including job descriptions that identify the names of the persons who during the renewal period were responsible for or who participated in the station's ascertainment efforts, public survey efforts, selection of program and/or program topics, and preparation of the station's issues/programs lists during the relevant period. But payroll records and personnel files are not required to be produced.

Specification (h). Scripps Howard will provide tapes for copying at the expense of Four Jacks of the programs upon which Scripps Howard expects to rely on for establishing its renewal expectancy. Four Jacks must select a commercial copy firm to which Scripps Howard will deliver the tapes. Alternatively, the parties may agree to some other arrangement.

Specification (i). No objection. All documents must be produced.

¹ Scripps Howard seeks an issue for especially good programming and an issue for especially good management. If any of those issues are added Scripps Howard will need to produce such evidence of other broadcasting stations.

Specification (j). Scripps Howard must produce all letters from the public which relate to the programming and operations at WMAR-TV during the renewal period.²

Specification (k). No objection. All documents must be produced.

Specification (l). Scripps Howard must produce all the documents sought by this specification which were not created for trial preparation and which relate to WMAR-TV and the renewal period. If a privilege is asserted for any document the parties must follow the procedures of the Prehearing Conference Order, supra.

Specification (m). Scripps Howard need not disclose its non-party public witnesses until August 20, 1993, the date set for the exchange of sworn testimony of public witnesses (Order FCC 93M-337). The process of selection of appropriate witnesses is a subject of trial preparation that is protected work product absent a showing of substantial need.

Specification (n). Scripps Howard must produce all such comparison documents that were prepared in the course of its business and not for the purpose of trial preparation. If privilege is asserted for any document the procedures set in the Prehearing Conference Order, supra, will apply.

Specification (o). Scripps Howard need not produce adverse letters from the Commission because there is no ineptness issue.³

Specification (p). Scripps Howard need not produce as a category of documents those which it considers relevant to its claim for a renewal expectancy.⁴

² All letters from the public must be produced in discovery whether they relate to programming or operations. While there is no ineptness issue, the letters may be written without that distinction in mind. The narrow relevance to programming will be applied at the admissions sessions.

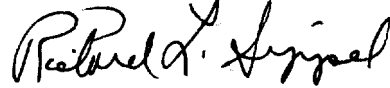
³ Said documents should be available in the Commission's public files, if any such documents exist.

⁴ The way to obtain those documents in discovery is through discrete specifications that have an intrinsic characteristic of good cause. Cf. FRCP 26, proposed amendments, 113 S. Ct. No. 15 (June 01, 1993) at CCCX (Justice Scalia's dissent noting that "[r]equiring a lawyer to make a judgment as to what information is 'relevant to disputed facts' plainly requires him to use his professional skills in the service of the adversary").

Order

IT IS ORDERED that copies of the documents will be produced by Scripps Howard at the Washington, D.C. offices of counsel for Four Jacks in accordance with the above rulings by 4:00 p.m. on June 28, 1993.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", is written over the printed name.

Richard L. Sippel
Administrative Law Judge